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VISHNU DEV SHARMA
v.
STATE OF U.P. AND ORS.
(Civil Appeal No. 619 of 2008)

B

JANUARY 23, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Constitution of India, 1950:

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Article 226 – Writ petition – Dismissal of, in summary manner – Without indicating any reason – Held: Is not warranted – Service law – Seniority.

D

Articles 136 and 226 – While deciding writ petition, High Court is required to assign reasons as its order is amenable to challenge before this Court – There is no meaning in drawing an analogy on powers exercised under Art.136 while rejecting appeals at SLP stage without assigning reasons with the power exercised while dealing with writ petition – Art.136 does not confer any right of appeal in favour of any party – Powers thereunder are special and extraordinary and object is to ensure that there is no miscarriage of justice.

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Administration of Justice:

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Justice delivery system – Right to reason in judgment/order – Held: Is indispensable part of sound judicial system – Reasons are necessary to indicate an application of mind to the matter by court – Principle of natural justice – Speaking order – Judgment/order.

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The appellant filed writ petition challenging the seniority list. High Court disposed of the writ petition in a summary manner. In appeal to this Court, appellant contended that in the seniority list, he was placed below the juniors, which was not permissible and that such summary dismissal of writ petition was not warranted as

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several issues of considerable importance were involved which were not considered by the High Court. A

Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1.1. The dismissal of the writ petition in summary manner without indicating any reason is clearly indefensible. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable. [Paras 7,8] [1115-A, B, C] B C

Breen v. Amalgamated Engineering Union (1971) 1 All E.R. 1148; Alexander Machinery (Dudley) Ltd. v. Crabtree (1974) LCR 120 – referred to. D

1.2. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. [Para 9] [1115-E, F, G] E F G

2. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any license to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: H

A “varying according to the Chancellor’s foot”. Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. Such ritualistic observations and summary disposal
B which has the effect of, at times, cannot be said to be a proper and judicial manner of disposing of judiciously the claim before the courts. The giving of reasons for a decision is an essential attribute of judicial and
C is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. [Para 10] [1116-C, D, E]

D *State of Orissa v. Dhaniram Luhar* (2004) 5 SCC 568 – referred to.

E 3. The attempt to draw an analogy on the power of this Court under Article 136 of the Constitution of India, 1950 and the practice of rejecting appeals at the SLP stage invariably without assigning reasons with the one to be
F exercised while dealing with a writ petition has no meaning and is illogical. First of all, the High Court is not the final court in the hierarchy and its orders are amenable to challenge before this Court, unlike the obvious position that there is no scope for any further appeal from the order
G made declining to grant special leave to appeal. It has been on more than one occasion reiterated that Article 136 of the Constitution does not confer any right of appeal in favour of any party as such and it is not that any and every error is envisaged to be corrected in exercising powers
H under Article 136 of the Constitution of India. The powers of this Court under Article 136 of the Constitution are special and extraordinary and the main object is to ensure that there has been no miscarriage of justice. That cannot be said to be the same with a writ petition. [Para 11] [1116-F-G; 1117-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 619 A
of 2008.

From the final Judgment and Order dated 27.01.2004 of
the High Court of Judicature at Allahabad in Civil Misc.Writ
Petition No. 18497 of 1994.

Tripurari Raja and Vishwajit Singh for the Appellant. B

S.B. Upadhyay, Niranjana Singh, Vimla Sinha and Raj
Singh Rana for the Respondents.

The Judgment of the Court was delivered by C

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a
Division Bench of the Allahabad High Court dismissing the Civil
Miscellaneous Writ Petition No. 18497 of 1994. The dispute
related to fixation of seniority. D

3. It is not necessary to go into the factual aspects in detail
as the writ petition was disposed of in a summary manner
observing as follows:

“This is a writ petition challenging the final seniority list. E

We have heard counsel for the parties. The seniority
has been given from the date of confirmation. We see no
illegality. The writ petition is dismissed.”

4. In support of the appeal, learned counsel for the appellant
submitted that such summary dismissal of writ petition was not
warranted as several issues of considerable importance were
involved, more particularly whether the norms for fixing seniority
in the background facts of the case were to be considered. F

5. Learned counsel for the appellant pointed out that in the
seniority list he was placed below juniors which was
impermissible. That aspect was not considered by the High
Court. G

6. Learned counsel for the respondent-State and its H

earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any license to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: "varying according to the Chancellor's foot". Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. Such ritualistic observations and summary disposal which has the effect of, at times, cannot be said to be a proper and judicial manner of disposing of judiciously the claim before the courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.

11. The attempt to draw an analogy on the power of this Court under Article 136 of the Constitution of India, 1950 (in short the 'Constitution') and the practice of rejecting appeals at the SLP stage invariably without assigning reasons with the one to be exercised while dealing with a writ petition has no meaning and is illogical. First of all, the High Court is not the final court in the hierarchy and its orders are amenable to challenge before this Court, unlike the obvious position that there is no scope for any further appeal from the order made declining to grant special leave to appeal. It has been on more than one occasion reiterated that Article 136 of the Constitution does not confer any right of

- A appeal in favour of any party as such and it is not that any and every error is envisaged to be corrected in exercising powers under Article 136 of the Constitution of India. The powers of this Court under Article 136 of the Constitution are special and extraordinary and the main object is to ensure that there has been no miscarriage of justice. That cannot be said to be the same with a writ petition. Consequently, this appeal is allowed and the order of the High Court is set aside.

12. In view of the aforesaid, we set aside the impugned order of the High Court and remit the matter to it for fresh disposal in accordance with law by a reasoned order. We make it clear that we have not expressed any opinion on the merit of the case.

D.G.

Appeal allowed.